

FCC MAIL SECTION

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**Before the
 Federal Communications Commission DA 96-1464
 Washington, D.C. 20554**

In the Matter of)	MM Docket No. 96-182
)	
Evergreen Media Corporation)	
)	
Order to Show Cause Why the)	
License for Station KNFL(AM))	
Tremonton, Utah Should)	
Not be Revoked)	

**ORDER TO SHOW CAUSE
 AND
 HEARING DESIGNATION ORDER**

Adopted: August 26, 1996 Released: August 30, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) a license held by Evergreen Media Corporation ("Evergreen") for Tremonton, Utah; and (b) the results of an investigation into the station's silent status.¹

2. Evergreen has been the licensee for KNFL(AM) since the September 15, 1993 consummation (File No. BAL-930719EB, granted August 30, 1993) of its purchase of the station from Northern Utah Broadcasting Co., Inc.² On July 12, 1994, Evergreen requested special temporary authority to permit KNFL(AM) to remain silent for "renovation of the transmitter and antenna to bring the station into compliance with FCC rules and regulations." The staff granted Evergreen's request, authorizing the station to remain silent through November 11, 1994. On November 18, 1994, Evergreen sought extension of this temporary authority, stating that its engineers continued "to work on bringing the station into compliance" but emphasizing that "adverse winter weather conditions" prevented erection of KNFL's tower. The staff approved Evergreen's request, extending the terms of the initial special temporary authority through March 6, 1995.

3. On March 9, 1995, Evergreen sought second extension of its temporary authorization, repeating its previous argument that "weather and engineering considerations"

¹The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See *Debrine Communications, Inc.*, 7 FCC Rcd 2118 (1992).

²The license for KNFL(AM) expires October 1, 1997 (BR-900514YD, granted August 27, 1991).

delayed completion of construction of KNFL's facilities. The staff again extended Evergreen's authority to remain silent, this time through June 17, 1995. Evergreen filed for a third extension on June 27, 1995, claiming continued delays from unspecified "engineering considerations and difficulty in finding available land." The licensee's request anticipated a return to regular broadcast operations by August 31, 1995. The staff extended, given this projection, KNFL's temporary authorization through October 6, 1995.

4. Evergreen failed to return KNFL to on-air status by the promised date, and requested on October 6, 1995 a fifth extension of its special temporary authority. In this request, Evergreen maintained once again that engineering and land availability considerations prevented the station's resumption of service. The licensee's request was approved, extending KNFL's permission to remain silent through June 5, 1996.

5. We now have under consideration Evergreen's sixth request, filed June 25, 1996, to extend the temporary authorization permitting KNFL(AM)'s silence. No progress towards resumption of operations is cited, and Evergreen reiterates, without elaboration, that "engineering considerations and difficulty in finding available land continue to hold up any progress in returning the station to the air." This request repeats the same justification offered in Evergreen's two most recent requests, and fails to demonstrate that broadcast operations cannot be resumed for reasons beyond the licensee's control. Thus, KNFL(AM) has been off-air for over two years, is not presently authorized to remain silent, and has not demonstrated that broadcast operations can be resumed expeditiously. Consequently, Evergreen is in apparent violation of Sections 73.1740(a)(4)³ and 73.1750⁴ of the Commission's Rules.

³Section 73.1740(a)(4) provides that:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

6. Accordingly, IT IS ORDERED, That pursuant to Sections 312(a) (3) and (4) of the Communications Act of 1934, as amended, Evergreen Media Corporation IS DIRECTED TO SHOW CAUSE why the license for KNFL(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

- (1) To determine whether Evergreen Media Corporation has the capability and intent to expeditiously resume the broadcast operations of KNFL(AM), consistent with the Commission's Rules.
- (2) To determine whether Evergreen Media Corporation has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Evergreen Media Corporation is qualified to be and remain the licensee of KNFL(AM).

7. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

8. IT IS FURTHER ORDERED, That to inform Evergreen Media Corporation of the issues specified against it, copies of this Order will be mailed by certified mail/return receipt requested to:

Evergreen Media Corporation
P.O. Box 1450
St. George, Utah 84771

Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W./Suite 900
Washington, D.C. 20036

⁴Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

9. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving its right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁵

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau

⁵The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See Radio Northwest Broadcasting Company, 4 FCC Rcd 596 n.3 (1989).